

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

In re:	§	Case No. 13-41815
	§	
MED-DEPOT, INC., <i>et al.</i>	§	(Chapter 11)
	§	
Debtors,	§	Jointly Administered
<hr style="width: 100%;"/>	§	
MED-DEPOT, INC.,	§	
	§	
Plaintiff,	§	ADV. PRO. NO. 13-04095
v.	§	
INVACARE CREDIT CORPORATION,	§	
	§	
Defendant.	§	
<hr style="width: 100%;"/>	§	
INVACARE CREDIT CORPORATION,	§	
	§	
Third Party Plaintiff,	§	
v.	§	
TEXAS CAPITAL BANK, N.A., and	§	
WESTBURY INVESTMENT PARTNERS	§	
SBIC, LP,	§	
	§	
Third Party Defendants.	§	
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JOINT AGREED MOTION TO DISMISS WITH PREJUDICE

Med-Depot, Inc. (“Med-Depot”) and Invacare Credit Corporation (“Invacare”) move to dismiss this action with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7041.

1. Med-Depot filed this action on November 11, 2013, seeking declaratory relief concerning liens that Invacare claimed on Med-Depot’s property and concerning Invacare’s claims. Invacare filed an answer on November 11, 2013 [Docket No. 6] seeking its own declaratory relief and asserting third-party claims against Texas Capital Bank (“TCB”) and

Westbury Investment Partners SBIC, LP (“Westbury”). TCB and Westbury have not responded to the third party claims asserted by Invacare. Their response deadlines have been extended by agreement.

2. The parties reached an agreement regarding the liens and claims that are the subject of this adversary proceeding. That settlement is contained in the Debtors’ Third Amended Plan of Reorganization [Bankruptcy Docket No. 227] that was confirmed by the Court on February 11, 2014 [Bankruptcy Docket No. 237]. Confirmation of the plan constituted approval of the settlement under Federal Rule of Bankruptcy Procedure 9019. Accordingly, this motion is being submitted to the Court pursuant to LBR 741(b).

3. Med-Depot and Invacare request that the Court enter an order dismissing this adversary proceeding with prejudice substantially in the form as the order attached to this motion, with costs taxed against the party incurring such costs.

WHEREFORE, Med-Depot and Invacare request that the Court enter an order dismissing this action with prejudice as requested herein, and for any other and further relief that the Court deems just and proper.

Date: March 7, 2014

Respectfully submitted,
/s/ James H. Billingsley
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-and-

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this pleading was served upon the parties listed below by United States mail on this 7th day of March, 2014, in addition to service on parties receiving notice through the ECF system.

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